

AMENDMENT NO. 1
TO
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF BETHEL
FOR CONSTRUCTION OF THE
BETHEL BANK STABILIZATION PROJECT

THIS AMENDMENT NO. 1 is entered into this 27th day of December, 2002, by and between the Department of the Army (hereinafter the "Government"), represented by the District Engineer for Alaska District and the City of Bethel (hereinafter the "Local Sponsor"), represented by its Mayor.

WITNESSETH, THAT:

WHEREAS, the Government and the Local Sponsor entered into a Project Cooperation Agreement on March 3, 1994 (hereinafter the "Agreement") for construction of the Bethel Bank Stabilization Project (hereinafter the "Project");

WHEREAS, construction of the Project was completed in the fall of 1997;

WHEREAS, the Energy and Water Development Appropriations Act of 2001, as enacted by Section 1 (a) (2) of Public Law 106-377, and House Conference Report No. 106-988, page 211, authorized and directed the Secretary of the Army, acting through the Chief of Engineers, to extend the existing Bethel Bank Stabilization project in Alaska an additional 1,200 feet upstream;

WHEREAS, the extension of the Project has been evaluated in a Letter Report entitled "Bethel Emergency Bank Stabilization: Brown's Slough to Small Boat Harbor Entrance, Bethel, Alaska" dated December 2001, approved by Pacific Ocean Division on December 20, 2001 (hereinafter the "Letter Report");

WHEREAS, the Government and the Local Sponsor desire to enter into an Amendment to the Agreement for construction, operation, and maintenance of the Project as modified;

NOW, THEREFORE, the Government and the Local Sponsor agree to amend the Agreement as follows:

1. Article I.a. of the Agreement is amended to read as follows:

"a. The term "Project" shall mean the 9,200 feet of river bank protection on the right bank of the Kuskokwim River at Bethel, Alaska, as described in the Bank Stabilization, Bethel, Alaska General Design Memorandum, dated May 1988, and approved by North

Pacific Division on June 28, 1988 as modified by the Limited Reevaluation Report, dated October 1993, and approved by the Office of the Assistant Secretary, Civil Works on December 23, 1993 as further modified by the Letter Report, dated December 2001, and approved by Pacific Ocean Division on December 20, 2001.”

2. Amend Article I.c. of the Agreement to delete the term “Contracting Officer” and replace it with “District Engineer.” Replace the term “Contracting Officer” with “District Engineer” in each and every location in the Agreement where it appears.

3. Article II.f. of the Agreement is amended to read as follows:

“f. As of the effective date of this Agreement, \$18,768,000 of Federal funds have been appropriated for the Project. This amount is less than the Federal share of the projected total project costs and the Government makes no commitment to seek additional Federal funds for the Project. Notwithstanding any other provision of this Agreement, the Government’s financial participation in the Project shall not exceed the total amount of Federal funds that heretofore have been appropriated and hereafter may be appropriated or otherwise made available for the Project. In the event that funds sufficient to meet the Government’s share of funds required to continue construction of the Project in the then-current or upcoming fiscal year are not made available for the Project, the Government shall notify the Local Sponsor of the insufficiency of funds and the parties, within the Federal and non-Federal funds available for the Project, shall suspend construction or terminate this Agreement in accordance with Article XVI.b. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of the total Federal funds available for the Project and an equal percentage of the total funds contributed by the Local Sponsor pursuant to paragraph c. of this Article as a contingency to pay the costs of termination, including any costs of contract claims and contract modifications.”

4. The following is made part of the Agreement by adding a new Article IV.b.3:

“3. Solely for contracts awarded and executed after the effective date of this Amendment crediting for relocations performed within the Project boundaries is subject to satisfactory compliance with applicable federal labor laws covering non-Federal construction, including, but not limited to the Davis-Bacon Act (40 USC 276a et seq), the Contract Work Hours and Safety Standards Act (40 USC 327 et seq) and the Copeland Anti-Kickback Act (40 USC 276c). Crediting may be withheld, in whole or in part, as a result of the Local Sponsor’s failure to comply with its obligations under these laws.”

5. Article V of the Agreement is amended to read as follows:

“ARTICLE V - PROJECT COORDINATION TEAM

a. To provide for consistent and effective communication, the Local Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of construction. The

Government's Project Manager and a counterpart named by the Local Sponsor shall co-chair the Project Coordination Team.

b. The Government's Project Manager and the Local Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

c. Until the end of the period of construction, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with the Davis-Bacon Act, Contract Work Hours and Safety Standards Act and the Copeland Anti-Kickback Act for relocations; the Government's cost projections; final inspection of the entire Project or functional portions of the Project; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a project management plan developed by the Government after consultation with the Local Sponsor.

d. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

e. The costs of participation in the Project Coordination Team shall be included in total project costs and cost shared in accordance with the provisions of this Agreement."

6. Article VI.a. of the Agreement is amended to read as follows:

"a. The Local Sponsor shall provide, during the period of construction, the cash payments required under Article II of the Agreement. The total project costs are estimated to be \$28,981,000 and the Local Sponsor's share of the total project costs is currently estimated to be \$7,245,000. In order to meet the Local Sponsor's share, the Local Sponsor must provide a cash contribution currently estimated to be \$770,000. The dollar amounts set forth in this Article are based upon the Government's best estimates which reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon cost actually incurred and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor."

7. The following is made part of the Agreement by adding it to the end of Article XII:

"The Local Sponsor is also required to comply with all applicable federal labor standards requirements including, but not limited to the Davis-Bacon Act (40 USC 276a et seq), the

Contract Work Hours and Safety Standards Act (40 USC 327 et seq) and the Copeland Anti-Kickback Act (40 USC 276c)."

8. Article XVI.c. of the Agreement is deleted in its entirety.

9. Article XX of the Agreement is amended to read as follows:

"The Local Sponsor has reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum amount of total project costs for the Bethel Bank Stabilization Project. Notwithstanding any other provision of this Agreement, the Government shall not make a new Project financial obligation, make a Project expenditure, or afford credit toward total project costs for the value of any contribution provided by the Local Sponsor, if such obligation, expenditure, or credit would result in total project costs exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$32,191,000, as calculated in accordance with ER 1105-2-100 using October 1, 2002 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902."

10. The following is made part of the agreement by adding a new Article XXI:

"ARTICLE XXI - HISTORIC PRESERVATION

a. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

b. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs, up to the statutory limit of one percent of the total amount authorized to be appropriated for the Project.

c. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph b. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall be included in total project costs and shared in accordance with the provisions of this Agreement."

11. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 which shall become effective upon the date it is signed by the Principal Deputy Assistant Secretary of the Army (Civil Works).

DEPARTMENT OF THE ARMY

CITY OF BETHEL

BY: 

Steven T. Perrenot
Colonel, Corps of Engineers
District Engineer

BY: 

Hugh Short
Mayor

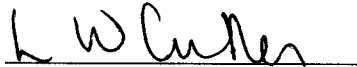
DATE: 12-27-02

DATE: 12-23-02

CERTIFICATE OF AUTHORITY

I, Louisiana W. Cutler, do hereby certify that I am a partner with Preston, Gates & Ellis LLP, which has a contract with the City of Bethel to perform legal services; that the City of Bethel is a legally constituted public body with full authority and legal capability to perform the terms of Amendment No. 1, between the Department of the Army and the City of Bethel in connection with the Bethel Bank Stabilization Project, and to pay damages in accordance with the terms of Amendment No. 1, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the person who has executed Amendment No. 1 on behalf of the City of Bethel has acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 23rd
day of January, 2002.



Louisiana W. Cutler
Preston Gates & Ellis LLP

CERTIFICATION REGARDING LOBBYING

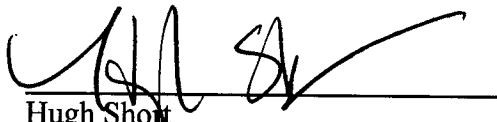
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Hugh Short
Mayor

DATE: 12-23-2